

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
for an Order Approving an Amendment to the
Power Purchase Agreement for Long-Term
Energy and Capacity Between Pacific Gas and
Electric Company and Oildale Energy LLC, a
California limited liability company. (U 39 E)

Application 02-01-042

**ADMINISTRATIVE LAW JUDGE'S RULING
REQUESTING FURTHER INFORMATION FROM
PACIFIC GAS AND ELECTRIC COMPANY**

This ruling requests additional information from Pacific Gas and Electric Company (PG&E) regarding its Application (A.) 02-01-042.

On January 31, 2002, PG&E filed A.02-01-042 and a Motion for an Expedited Order Approving an Amendment to the Power Purchase Agreement (PPA) between PG&E and Oildale Energy LLC (Oildale), a California limited liability company (Application)). On February 11, 2002, PG&E made a Supplemental Filing in support of its Application. The Application requests Commission approval of a Third Amendment (Amendment) that modifies the PPA. The Third Amendment provides for a 3-½ year fixed energy price and resolves certain litigation between Oildale, a qualifying facility (QF), and PG&E. PG&E estimates that as a result of the 3-1/2 year fixed price ratepayers will pay approximately \$4.7 million more than they would pay under current short-run avoided cost prices.

On February 20, 2002, Oildale filed a response in support of PG&E's Application. Oildale's response discusses why the Application is reasonable and should be approved. No other parties have filed responses.

On March 15, 2002, I issued a ruling requesting supplemental information regarding projected energy costs and provided PG&E an opportunity to submit any other additional information to justify the Application.

On April 3, 2002, Oildale filed a Joint Response of PG&E and Oildale to the March 15, 2002 Ruling. The Joint Response is based on an evaluation by MRW & Associates, and provides information regarding projected natural gas prices, gas price volatility, stabilization of Oildale's operations as a QF and a discussion of the settlement of litigation between PG&E and Oildale.

However, the information provided with regard to the settlement of litigation is incomplete. As explained in the Joint Response the settlement of litigation assumes a number of conditions necessary to conclude that the potential costs of litigation exceed the \$4.7 million premium paid by ratepayers for energy during the 3-½ year term of the Amendment. These assumptions include: (1) that ratepayers are liable for the litigation between PG&E and Oildale, (2) that the damages to consider are defined as the difference between the total payments that Oildale would expect to receive under the PSA (contract) (i.e. energy, capacity, and capacity bonus payments) and payments Oildale might receive on the open market, (3) that in calculating the value of damages Oildale's energy price on the open market would not include any value for capacity, (4) that the inability of Oildale to sell on the open market during summer 2001 is a result of actions by PG&E, and (5) that contract termination is an appropriate or viable assumption for calculating damages given that (a) PG&E and Oildale have

assumed the PPA in their respective bankruptcy proceedings, (b) Oildale has been in operation, supplying PG&E with both energy and capacity since August 2001 under a Supplemental Payments contract (the First Amendment), and (c) that Oildale is a viable QF on a going-forward basis.

This ruling directs PG&E to file information supporting these assumptions, the calculations and analysis used to derive the potential ratepayer liability, and any other information regarding litigation risk relevant to this Application. All such information must be verified and supported by declarations.

Although I allowed an opportunity for PG&E and Oildale to provide a joint response to my March 15, 2002 ruling, in this ruling I am directing that the response be filed by PG&E and not jointly by PG&E and Oildale. This provision is due to the nature of the requested information, namely further information and analysis of litigation between PG&E and Oildale. However, Oildale may file a concurrent response to the ruling, or may file a response to PG&E's filing.

PG&E states in its motion that expeditious approval of this application is necessary in order to provide economic viability of the Amendment that will allow Oildale to purchase natural gas at favorable prices. In order to analyze the required information in an expeditious manner, PG&E is requested to file this information no later than May 24, 2002.

Therefore, **IT IS RULED** that:

1. Additional information is required to justify Pacific Gas and Electric Company's (PG&E) Application 02-01-042.
2. No later than May 24, 2002, PG&E shall provide the information requested as described in this ruling. All information shall be verified and supported by declarations.

3. Oildale Energy LLC (Oildale) may file a concurrent response to this ruling, or may file a response to PG&E's filing.

4. If Oildale chooses to respond to PG&E's filing to this ruling, that response shall be provided within 10 days of PG&E's response.

Dated May 7, 2002, at San Francisco, California.

/s/ BRUCE DEBERRY
Bruce DeBerry
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Requesting Further Information from Pacific Gas and Electric Company on all parties of record in this proceeding or their attorneys of record.

Dated May 7, 2002, at San Francisco, California.

/s/ JENNIE CHANG

Jeannie Chang

N O T I C E

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

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